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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/760,324	01/20/2004	Brett Lickle	LKL-100US	9784
31344	7590	10/06/2006	EXAMINER	
RATNERPRESTIA P.O. BOX 1596 WILMINGTON, DE 19899			NGUYEN, TAM M	
			ART UNIT	PAPER NUMBER

3764

DATE MAILED: 10/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/760,324

Applicant(s)

LICKLE, BRETT

Examiner

Tam Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) 15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-14 and 16-19 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.


Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 January 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received


JEROME DONNELLY
PRIMARY EXAMINER

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 7-19-04.
- 4) ☒ Interview Summary (PTO-413)
Paper No(s)/Mail Date. 9-29-06.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____.

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C.

121:

- I. Claims 1-14 and 16-18, drawn to a balance board training apparatus and method of exercise, classified in class 482, subclass 51.
- II. Claim 15, drawn to a surfboard accessory, classified in class 441, subclass 65.

2. Inventions I are II are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct if they do not overlap in scope and are not obvious variants, and if it is shown that at least one subcombination is separately usable. In the instant case, invention I has separate utility such as balancing exerciser, and invention I may be combined with invention II, but Invention I does not require the combination of invention II to be usable. See MPEP § 806.05(d).

3. The examiner has required restriction between subcombinations usable together. Where applicant elects a subcombination and claims thereto are subsequently found allowable, any claim(s) depending from or otherwise requiring all the limitations of the allowable subcombination will be examined for patentability in accordance with 37 CFR 1.104. See MPEP § 821.04(a).

Applicant is advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is

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allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application.

4. Because these inventions are independent or distinct for the reasons given above and there would be a serious burden on the examiner if restriction is not required because the inventions have acquired a separate status in the art in view of their different classification, restriction for examination purposes as indicated is proper.

5. During a telephone conversation with Basil Krikelis on September 29, 2006 a provisional election was made without traverse to prosecute the invention of the balance board, claims 1-14 and 16-19. Affirmation of this election must be made by applicant in replying to this Office action. Claim 15 is withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Drawings

6. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: "top surface of the board" 114, 214, 314, 414. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top

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margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR

1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action.

The objection to the drawings will not be held in abeyance.

Information Disclosure Statement

7. The information disclosure statement filed July 19, 2004 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the non-patent literature referred to therein has not been considered.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 6-9, 11, 12 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Coplin et al. (3,024,021).

8. As to claims 1-4, 6-9, 11, 12 and 16, Coplin et al. disclose an apparatus and inherently a method of exercise with the apparatus wherein the apparatus comprises a board (10) with an upper surface and a lower surface in which the lower surface comprises a concave region (14) that encompasses anywhere

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between 15%-95% of the lower surface area such that the board is adapted to ride on a substantially spherical balancing insert (8) (see Fig. 2). Coplin et al. further disclose that the concave region comprises a substantially rounded shape that would broadly include substantially oval or circular shapes (see col. 2, lines 9-12), the board further comprises a securing device (16), and the concave region and the insert further comprises a surface having a textured coatings/pad (12) that are compatible (see Fig. 2 and Col. 2, lines 9-16).

Claims 1 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Sasser, Jr. (3,488,049).

9. As to claims 1 and 5, Sasser discloses an apparatus comprising a board (8) having an upper surface and a lower surface in which the lower surface comprises a concave region (26) adapted to ride on a substantially spherical balancing insert wherein the concave region comprises a substantially rectangular shape (see Figs. 1-6).

Claims 6 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Hall, Jr. (5,415,589).

10. As to claims 6 and 13, Hall discloses an apparatus comprising a board (14) having an upper surface and a lower surface in which the lower surface comprises a concave region (18) adapted to receive a balance insert/swivel bearing (inherently spherical) (21), and a platform having a convex top surface and a substantially flat bottom surface wherein the balancing insert rotates in the top surface (see Fig. 3).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6, 10, 14 and 16-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sasser (3,488,049) in view of Armer (4,191,371).

11. As to claims 6, 10, 14, 16 and 17, Sasser discloses a balance training device and inherently a method for exercising, the device comprising a board, a platform having a concave top surface and a substantially flat bottom, and a single insert wherein the board comprises an upper surface and a lower surface having a rectangular concave region adapted to receive the balancing insert whereby the board rides over the balancing insert and the insert rides on the top surface of the platform (see Figs. 1 and 2). Sasser does not disclose that the insert is substantially spherical. Armer discloses a similar exercise device wherein the balancing insert (12) is spherical (see Fig. 2). At the time of the invention it would have been obvious to a person of ordinary skill in the art to substitute Sasser's roller insert with Armer's spherical insert such that a user can rotate and balance not only from side to side but also in any direction within the concave region for improved development of the user's leg muscles.

12. As to claims 18 and 19, Sasser and Armer disclose a modified device and method of exercise as described above. Sasser inherently discloses the step of

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providing a plurality of boards having different concave regions (44,62) to change the degree of difficulty of the exercise wherein the difficulty can be sequentially increased by selecting boards that gradually increase in the concave region (see Figs. 3 & 5).

Conclusion

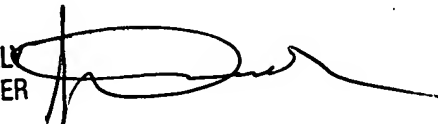
13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Larsen '559, Tracy '726, England '768 and Malmberg et al. '116 each disclose balance training devices that include boards and spherical balance inserts.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tam Nguyen whose telephone number is 571-272-4979. The examiner can normally be reached on M-F 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on 571-272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

JEROME DONNELLY
PRIMARY EXAMINER



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

September 29, 2006
